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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

KELLY CAHILL, et al.,

Plaintiffs,

vs.

NIKE, INC., an Oregon Corporation,  
Defendant.

Case No. 3:18-cv-01477-AB

**JOINT STATEMENT REGARDING  
TRIAL OF DISPARATE IMPACT  
CLAIMS**

Pursuant to ECF No. 576, the parties submit this joint statement regarding whether the disparate impact claims are tried to a jury or the Court.

The parties agree that the four Plaintiffs' disparate impact claims under Title VII and Oregon state law are tried to the Court. Title VII only provides for a jury when compensatory or punitive damages are available. 42 U.S.C. § 1981a(a)(1), (c). Such damages are not available in disparate impact actions, which are limited to equitable relief. *See e.g., McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 672 F.3d 482, 483-84 (7th Cir. 2012) (citations omitted), *abrogated on other grounds by Phillips v. Sheriff of Cook Cnty.*, 828 F.3d 541 (7th Cir. 2016). Because Oregon's employment discrimination statute was modeled on Title VII and generally mirrors the federal statutory regime, the parties agree that Plaintiffs' disparate impact claims brought under Oregon state law similarly are tried to the Court. *See, e.g., Richardson v. Nw. Christian Univ.*, 242 F. Supp. 3d 1132, 1146 (D. Or. 2017) ("Because Oregon's employment discrimination statute was modeled after Title VII, plaintiff's state and federal discrimination claims are analyzed in the same way."). In addition, trying the Plaintiffs' Title VII disparate impact claims to the Court, while trying their Oregon state law disparate impact claims to the jury, risks inconsistent verdicts on similar claims, which does not benefit the Court or the parties. For these reasons, the parties stipulate and agree that the Plaintiffs' disparate impact claims should be tried to the Court.

Dated: December 18, 2024

Respectfully submitted,

GOLDSTEIN, BORGEN, DARDARIAN & HO

/s/ Byron Goldstein

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